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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

In re ) Chapter 11  
YELLOWSTONE MOUNTAIN CLUB, LLC, et al., ) Case No. 08-61570-11  
Debtors. ) Jointly Administered

UNITED STATES TRUSTEE'S OBJECTION TO ANTICIPATED MOTION OF DEBTORS  
FOR SECOND INTERIM ORDER (1) AUTHORIZING DEBTORS TO ENTER INTO  
AMENDED POST-PETITION FINANCING FACILITY (II) AUTHORIZING DEBTORS  
TO UTILIZE CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO  
PRE-PETITION SECURED LENDERS AND (IV) SCHEDULING FINAL HEARING

Acting United States Trustee Robert D. Miller Jr., through his undersigned attorney, Daniel P. McKay, hereby objects to any Motion that the Debtors may file prior to or at the hearing on final approval of the Debtors' agreement for post-petition financing with Credit Suisse which is embodied in the Court's Interim Order entered on November 13, 2008 (Docket no. 40), which seeks entry of a second interim order (1) authorizing Debtors to enter into an amended post-petition financing facility, (II) authorizing Debtors to utilize cash collateral, (III) granting adequate protection to pre-petition secured lenders and (IV) scheduling final hearing. This objection is made upon the following grounds and for the following reasons:

1. The Debtors filed a Notice of “intent” (Docket no.73) to file a motion seeking a second interim order approving post-petition financing. The notice indicates, at paragraph three (3), that, although the Debtors “have not yet reached agreement on the terms of an Amended DIP Facility, the Debtors expect to reach such agreement and propose Amended DIP Facility terms at

1 **or prior to the Hearing.**” It goes on to say, at paragraph four (4), that if an agreement is reached  
 2 on the terms of an Amended DIP Facility, a Motion of approval of such Amended DIP Facility  
 3 could be filed as late as at the hearing itself. This procedure is unacceptable and does not comply  
 4 with the requirements of Rule 4001 F.R.B.P. Under subdivisions (b)(1)(C), and (c)(1)(C) of the  
 5 Rule the Debtor is required to serve the motion either on any committee appointed under  
 6 Bankruptcy Code § 1102 or, as in this case since such a committee or committees have not been  
 7 appointed yet, on those creditors holding the twenty largest unsecured claims. Since the Notice  
 8 filed by the Debtors does not include a certificate of service, it appears that the only parties that  
 9 have received service of the Notice are those that are receiving electronic notice through the  
 10 Court’s ECF system. Further, even if this Notice were served on every party in interest in these  
 11 cases, the Notice itself is not a motion that complies with the requirements of Rule 4001. The  
 12 Notice alludes to terms that are “possible or likely” in the anticipated motion for a second interim  
 13 order, but Rule 4001 requires much more than a mere “heads up”. Subdivision (c)(1)(B) or rule  
 14 4001 requires that a motion to obtain credit:

15 ...shall consist of or (if the motion is more than five pages in  
 16 length) begin with a concise statement of the relief requested, not  
 17 to exceed five pages, that lists or summarizes, and sets out the  
 18 location within the relevant documents of, all material provisions  
 19 of the proposed credit agreement and form of order, including  
 20 interest rate, maturity, events of default, liens, borrowing limits,  
 21 and borrowing conditions. If the proposed credit agreement or  
 22 form of order includes any of the provisions listed below, the  
 23 concise statement shall also: briefly list or summarize each one;  
 24 identify its specific location in the proposed agreement and form of  
 25 order; and identify any such provision that is proposed to remain in  
 26 effect if interim approval is granted, but final relief is denied, as  
 27 provided under Rule 4001(c)(2). In addition, the motion shall  
 28 describe the nature and extent of each provision listed below:

- 23 (i) a grant of priority or a lien on property of the  
 24 estate under § 364(c) or (d);  
 25 (ii) the providing of adequate protection or priority  
 26 for a claim that arose before the commencement of  
 27 the case, including the granting of a lien on property  
 28 of the estate to secure the claim, or the use of  
 property of the estate or credit obtained under § 364  
 to make cash payments on account of the claim;

- 1 (iii) a determination of the validity, enforceability,  
2 priority, or amount of a claim that arose before the  
3 commencement of the case, or of any lien securing  
the claim;
- 4 (iv) a waiver or modification of Code provisions or  
applicable rules relating to the automatic stay;
- 5 (v) a waiver or modification of any entity's  
6 authority or right to file a plan, seek an extension of  
7 time in which the debtor has the exclusive right to  
file a plan, request the use of cash collateral under §  
8 363(c), or request authority to obtain credit under §  
364;
- 9 (vi) the establishment of deadlines for filing a plan  
10 of reorganization, for approval of a disclosure  
statement, for a hearing on confirmation, or for  
entry of a confirmation order;
- 11 (vii) a waiver or modification of the applicability of  
12 nonbankruptcy law relating to the perfection of a  
lien on property of the estate, or on the foreclosure  
13 or other enforcement of the lien;
- 14 (viii) a release, waiver, or limitation on any claim or  
15 other cause of action belonging to the estate or the  
trustee, including any modification of the statute of  
16 limitations or other deadline to commence an  
action;
- 17 (ix) the indemnification of any entity;
- 18 (x) a release, waiver, or limitation of any right under  
§ 506(c); or
- 19 (xi) the granting of a lien on any claim or cause of  
20 action arising under §§ 544, 545, 547, 548, 549,  
553(b), 723(a), or 724(a).

21 The obvious purpose of Rule 4001(c) F.R.B.P. is to give creditors clear and concise  
22 information concerning the terms of any proposed post-petition credit agreement. Further, even  
23 when proper notice of a motion to obtain credit is given under the Rule, the Court is directed to  
24 authorize the obtaining of credit, prior to a final hearing on such motion, which can occur no  
25 earlier than 15 days after service of the motion, "...only to the extent necessary to avoid  
26 immediate and irreparable harm to the estate pending a final hearing." If the Debtors' first  
27 motion to approve its credit agreement with Credit Suisse is any indication, the anticipated  
28 motion for a second interim order will have provisions fitting into virtually every category set out

1 in subsection (c)(1)(B) of the Rule. This Court should not consider approval of a motion that  
 2 does not comply with all of the requirements of Rule 4001 F.R.C.P.

3 2. It is difficult to understand the emergency nature of the filing of the petitions  
 4 commencing these cases. An examination of the response to question four (4) of the Statements  
 5 of Financial Affairs filed by the Debtors does not indicate that there are any pending foreclosures.  
 6 The petitions and the motion for approval of the first interim financing order were filed on the  
 7 evening of November 10, 2008, on the eve of a federal holiday, with a request for hearing on  
 8 November 12<sup>th</sup>. Parties had very little time to assess the potential impact of the financing  
 9 motion. Even so, this Court voiced its concern regarding the terms of the motion and associated  
 10 term sheet. Fortunately, the interim order applies only to the loan of \$4,450,000 under the DIP  
 11 Facility. Now, it appears likely that the Debtors will come to this Court with a second motion to  
 12 approve post-petition credit, with many terms required by Rule 4001F.R.B.P. to be identified  
 13 concisely in advance, that will provide creditors with even less, if any, notice than the first such  
 14 motion. The United States Trustee asserts that it would be a violation of creditors' due process  
 15 rights to approve such a motion, even on an interim basis, under these circumstances.

16 3. The United States Trustee objects to any motion filed by the Debtors for approval of a  
 17 second interim order, as contemplated in the Debtors' Notice of Intent, that does not contain a  
 18 reasonable "carve out" for the fees and expenses of professionals of any committee appointed  
 19 under Bankruptcy Code § 1102, a chapter 11 trustee if one is appointed under Bankruptcy Code  
 20 § 1104, and a chapter 7 trustee if these cases are converted to chapter 7.

21 WHEREFORE, the United States Trustee objects to any motion that may be filed by the  
 22 Debtors to approve a second interim financing order upon the grounds set out herein.

23 DATED this 24<sup>th</sup> day of November, 2008.

24 Respectfully Submitted

25 ROBERT D. MILLER JR.  
 26 Acting United States Trustee

27 /s/ Daniel P. McKay  
 28 DANIEL P. MCKAY  
 Attorney for United States Trustee